

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(8100-8110 Belair Road)**

14th Election District
5th Council District
Eugene S. Lorenzo
Legal Owner

Belair Hill, LLC
Contract Purchaser/Lessee

Petitioners

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* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* **Case No: 2020-0159-XA**

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 8100-8110 Belair Road. The Petitions were filed on behalf of Eugene S. Lorenzo, legal owner and Belair Hill, LLC, Contract Purchaser/Lessee (“Petitioners”). The Special Exception petition seeks from § 405.2.B.1 of the Baltimore County Zoning Regulations (“BCZR”), to allow a fuel service station with a convenience store of 5,685 sq. ft. on an individual site. The Petition for Variance seeks relief from § 405.4.A.3.c(2) of the BCZR to allow nine (9) stacking spaces in lieu of the required 12 spaces. Also, relief from § 405.4.A.2.b, to allow a 7.5 ft. landscape transition area in lieu of the required 10 ft. from a public right-of-way and a 7 ft. landscape transition area in lieu of the required 15 ft. from a property line abutting a residentially zoned property. For such other and further relief as the nature of this cause may require.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was advertised and posted. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing in support of the petitions were Eugene Lorenzo, the property owner, and David Schlachman, the contract purchaser. Walenty Zarski, the civil engineer who helped prepare the site plan also appeared, as did Mitch Kellman, who was accepted as an expert in zoning, land use, and the BCZR. Timothy Kotroco, Esq. represented the Petitioners.

Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) dated September 15, 2020. ZAC comment was also received from the Department of Environmental Protection and Sustainability Development Coordination (“DEPS”). They did not oppose the requested relief, subject to proposed conditions, which will be incorporated into the Order. There was no community opposition at the hearing, although an email opposing the petition was received and will be admitted as Protestant’s Exhibit 1.

SPECIAL EXCEPTION

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. *Schultz v. Pritts*, 291 Md. 1 (1981). The *Schultz* standard was revisited in *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use.

Mr. Kotroco explained that the subject property is the former site of “Mimi Lorenzo’s,” a restaurant and bar that operated there for many years. The structure on the site now houses an antique store. He explained that if the requested relief is granted that structure will be razed. Mr. Zarski explained the site plan in detail, and pointed out that a substantial portion on the west side of the property will remain undeveloped and forested, in compliance with the forest conservation

provisions set forth in B.C.C. Section 33-6-101 *et seq.* He and Mr. Kellman also explained the unique shape and grade changes at the site. Mr. Kotroco submitted an aerial map of the vicinity showing that, in accordance with BCZR § 405.3 there is not an abandoned fuel service station within a half mile of the site, nor two abandoned fuel service stations within a mile. *See*, Petitioner's Exhibit 5. Mr. Kellman testified that in his expert opinion the proposed fuel station and convenience store comply with all the requirements of BCZR § 502.1 and the requested relief is within the spirit and intent of the BCZR.

The email received from Ms. Gloria Kelly (Protestant's Exhibit 1) opposes the construction of this fuel station/convenience store because there are already several other such businesses in the area, as well as grocery stores and other businesses. In her view this proposed business is simply not needed and not wanted.

While I understand and appreciate Ms. Kelly's position, I find that based on the entire record evidence that the requested relief must be granted under the legal presumptions in favor of special exception uses. *Schultz v. Pritts, supra.*

VARIANCE

Under BCZR § 307, and Maryland common law, in order to be entitled to variance relief the Petitioner must satisfy a two-step legal analysis, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity is what necessitates the requested variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, supra.

As discussed above, the property in this case is unique based on its irregular shape and significant grade changes. Further, it is these unique features which necessitate the requested

variance relief. I further find that the Petitioner would suffer harm and practical difficulty if the variance are denied because they would be unable to construct the proposed project. Finally, I find that the relatively modest variances can be granted within the spirit and intent of the BCZR and without harming the public health, safety, or welfare.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this day **9th** of **October, 2020** that the Petition for Special Exception to permit pursuant to § § 405.2.B.1 of the BCZR to allow a fuel service station with a convenience store of 5,685 sq. ft. on an individual site be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance from § 405.4.A.3.c.(2) of BCZR to allow nine (9) stacking spaces in lieu of the required 12 spaces; and from § 405.4.A.2.b, to allow a 7.5 ft. landscape transition area in lieu of the required 10 ft. from a public right-of-way and a 7 ft. landscape transition area in lieu of the required 15 ft. from a property line abutting a residentially zoned property be and hereby are GRANTED .

The relief granted herein shall be subject to the following:

- Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.
- Prior to issuance of permits, Petitioners must comply with the ZAC comments made by the DOP and DEPS, a copy of which is attached hereto and made a part hereof.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed
PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM/dlm